



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Burnside-Ott Aviation Training Center
File: B-229793
Date: March 4, 1988

DIGEST

1. Protest alleging the use of undisclosed subjective evaluation criteria is denied where the record indicates that all proposals were scored according to the announced criteria in the solicitation.
2. Unfair or prejudicial motives will not be attributed to an agency's procurement officials simply on the basis of inference or supposition.
3. A competitive advantage accruing to an incumbent is not per se objectionable unless it is a result of preferential treatment or other unfair action by the government.

DECISION

Burnside-Ott Aviation Training Center, protests the award to RCA Government Services of a contract for operation and maintenance of full scale aerial targets at Tyndall Air Force Base, Florida and Holloman Air Force Base, New Mexico, and for operation and maintenance of sub-scale aerial targets and the Gulf range drone control upgrade system (GRDCUS) at Tyndall Air Force Base. Award was made under request for proposals (RFP) No. F08637-87-R-0005, issued by the Air Force. Burnside contends that the Air Force conducted a sham competition amounting to a de facto sole-source procurement. Specifically, Burnside principally alleges that the agency improperly and unfairly evaluated its proposal by introducing undisclosed evaluation criteria, and that the agency's evaluators were admittedly prejudiced "for or against" the incumbent, thereby precluding a fair evaluation.

We deny the protest.

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The RFP was issued on May 1, 1987, and provided explicit instructions for proposal preparation. The instructions stated that both a technical proposal and a cost proposal were to be submitted. The RFP stated that award would be made to the responsible offeror whose offer, conforming to the solicitation, is within a competitive range and has been evaluated as most advantageous to the government when technical, cost, and other factors are considered. The RFP stated that cost would be considered only in terms of reasonableness. Offerors were advised that their technical proposals should address each paragraph in the Statement of Work to indicate the offeror's soundness of approach, understanding of the requirement, and compliance with the requirements.

The solicitation contained the following technical evaluation criteria, in descending order of importance: (1) contractor's understanding, approach, methods, and ability to satisfy the requirements of the Statement of Work; (2) contractor's proposed manning tables, shift schedules, resumes, position descriptions (including skill levels), personnel recruitment, training and retention program, and functional organization; (3) past experience with computer operation and maintenance requirements, and familiarity with all equipment to be utilized on the systems; (4) plan for contingencies; (5) plan for acquiring any necessary subcontracting and utilization thereof; and (6) proposed implementation of phase-in schedule for all personnel and functions.

Two proposals were received by the scheduled closing date on June 29. One proposal was submitted by RCA, the incumbent, and the other by Burnside. Based upon the initial evaluation, deficiency/clarification requests were issued July 15. Responses to those requests were received July 31, and were evaluated. Discussions were then held with both parties and best and final offers (BAFOs) were requested on August 7 and received on August 18. Those BAFOs were evaluated, the source selection process was completed, and RCA was selected for award.^{1/} Award was made on October 1, and Burnside was advised of that award by letter dated that same day.

^{1/} RCA had a significantly higher technical score after BAFOs and offered a total cost of \$26,296,033. Burnside offered a total cost of \$25,897,615.

On October 4, Burnside requested a debriefing, which was provided on October 6. On October 20, Burnside filed an agency-level protest which was denied as being without merit by letter dated November 23. This protest followed.

Based on statements made at the debriefing, Burnside contends that in addition to the six technical evaluation factors contained in the RFP, the agency introduced and relied upon undisclosed factors of (1) whether a firm other than Digital Equipment Corporation (DEC) could maintain the base's existing DEC computers; (2) whether Burnside had the ability to hire technical personnel presently employed by the incumbent; and (3) whether changing contractors increased the risk of compliant initial performance. In addition, Burnside alleges that its response to Points for Negotiation 004 and 006 concerning adequate personnel support for single and two drone formation missions at Holloman, included in its BAFO, was misevaluated as "weak" by the agency and indicated favoritism to the incumbent as further evidenced by the contracting officer's comments in the debriefing referring to "an incumbent advantage" and "prejudice for or against" the incumbent.

As stated above, the protester's allegations stem from its agency debriefing held October 6. The protester contends that the comments made by the contracting officer and other Air Force personnel clearly establish that the agency misevaluated proposals and that the evaluators were prejudiced in favor of the incumbent. A transcript of the debriefing has been provided by the protester for our review. Based upon our review of the debriefing transcript, the RFP, the agency's performance analysis report, the technical proposals, and other evaluation documents, we find Burnside's allegations to be without merit.

While agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which might be taken into account. All that is required is that those aspects not identified be logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, Feb. 7, 1980, 80-1 CPD ¶ 107. Further, the evaluation and scoring of technical proposals is the function of the contracting agency and our review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Lembke Construction Co., Inc., B-228139, Nov. 23, 1987, 87-2 CPD ¶ 507; Delany, Siegel, Zarn & Assocs., B-224578.2, Feb. 10, 1987, 87-1 CPD ¶ 144.

Our review of the technical proposals does not indicate that there were undisclosed factors which were given technical weight and used for evaluating the technical proposals.

With respect to the protester's concern of an undisclosed factor of ability to maintain DEC computers, this was a requirement of the Statement of Work which was required to be addressed and which was evaluated as to the offeror's understanding of the requirements (factor 1). Burnside addressed this matter in its technical proposal regarding GRDCUS Hardware Maintenance. Burnside simply noted that they "understand and accept [the] requirement" and gave no elaboration on how the computer system would be maintained except that it would subcontract the work. RCA, on the other hand, carefully detailed the importance of hardware maintenance and set out in detail its ability to meet the many demands required for such maintenance. RCA explained its intent to continue use of its subcontractor, DEC, and their diagnostic procedures/software necessary for computer maintenance, which are copyrighted. Based on our review, we think the resulting higher scores were not, however, a result of the agency's decision to give more points to RCA for its use of DEC but, rather, were directly related to Burnside's failure to convincingly demonstrate to the evaluators its understanding of and ability to maintain the GRDCUS hardware.

Burnside further alleges that its technical proposal was improperly downgraded because the evaluators were concerned about its ability to hire technical personnel currently employed by RCA (contractor's proposed manning--factor 2). Again, we agree that this was a legitimate concern of the evaluators which reasonably contributed to Burnside's lower scores. In its proposal, Burnside stated that 90 percent of its employees would be taken from the incumbent. Similarly, in its technical discussion regarding Range Control Facility Computer Operations, Burnside admits to a total reliance on incumbent personnel and gives no explanation of the VAX computer system or any understanding of the GRDCUS facility. Since Burnside was unable to adequately address these solicitation requirements without reliance on incumbent personnel, we find it reasonable that the evaluators would consider the likelihood of hiring such incumbent personnel in their evaluation of these factors. Burnside simply failed to convince the evaluators that it could hire the necessary personnel to meet the solicitation's requirements. We find this concern especially reasonable given RCA's stated personnel policy of retaining its incumbent personnel regardless of whether it was successful in receiving the award at issue.

Next, we find no basis for Burnside's additional contention that the Air Force had undisclosed knowledge that the GRDCUS system was "an immature system in the throes of a turnover and hence changing contractors increases the risk of compliant initial performance." In response to the agency-level protest, the contracting officer pointed out that the term "upgrade" in GRDCUS implies a system which is being improved. Also, the RFP synopsis which appeared in the Commerce Business Daily clearly referred to the need to respond to change and to engage in development of the GRDCUS system. Moreover, the protester itself acknowledged the developmental nature of GRDCUS in its proposal, stating that "the attendant risk associated with any high technology development program such as GRDCUS requires . . . analytical skills of the highest order." We therefore find no merit to this protest ground.

Additionally, Burnside alleges that its questions during discussions with the Air Force concerning drone mission requirements at Holloman were improperly used to draw a negative inference about its capabilities and resulted in a low rating for that aspect of the technical proposal. At the debriefing, the contracting officer assured Burnside that the discussions were not scored; however, he further indicated that Burnside's questions during discussions could have left a negative impression on the evaluators.

We agree with the Air Force that it is impossible to eliminate impressions left by offerors. We, therefore, are limited to determining whether the evaluation of Burnside's capability in this area was reasonable. Our review of the technical proposals indicates that Burnside's proposal had weaknesses concerning drone mission preparation and launch. The Air Force found that Burnside's proposal for cross-utilization of people in support of eight line operations was not reasonable and could be hazardous. Further, the Air Force found that Burnside's proposed use of "C" mechanics to perform duties that require "B" mechanics and its manning matrix showing cross-training of non-related jobs indicated that Burnside did not fully comprehend the distinctions in single and multiple drone missions, their launch requirements, or the pre-mission and post-mission maintenance needs. Based on our review, we have no basis to question these findings. Accordingly, we conclude that the agency's lower rating of Burnside on these points of concern was reasonable.

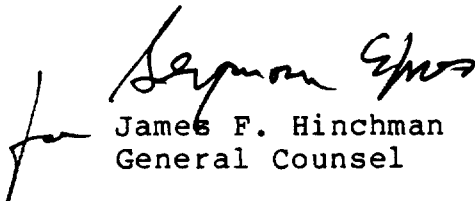
Next, Burnside challenges the subjective motivation of the evaluators. Where, however, the protester fails to demonstrate bias, its allegations must properly be regarded as mere speculation. See Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. In this regard, unfair or

prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD ¶ 541. Here, Burnside has taken the contracting officer's statements at the debriefing regarding the incumbent's "inherent advantage" and the evaluators' "prejudice" out of context. Our review of the debriefing transcript does not show that the contracting officer expressed any knowledge of bias on the part of the evaluators, one way or the other, towards the incumbent. His statements were made to point out that incumbents may have a competitive advantage for follow-on contracts simply because of their experience and/or familiarity with the procuring agency. Such advantages are not per se objectionable, so long as they do not result from preferential treatment or other unfair action by the government. Thermex Energy Corp., B-227034.2, Aug. 17, 1987, 87-2 CPD ¶ 164. Aside from these innocent statements of the contracting officer at the debriefing, there is no evidence of bias in the record. Therefore, Burnside has not met its burden of proof and we regard its argument as mere speculation. See Wilkinson Manufacturing Co., B-225280, Mar. 13, 1987, 87-1 CPD ¶ 284.

In summary, Burnside's received a lower technical rating, not because it was evaluated against undisclosed evaluation criteria, but because (1) its proposal was not sufficiently detailed and did not fully address the requirements in the Statement of Work; (2) it did not demonstrate understanding of the complexities and maintenance skill requirements of drone mission preparation and launch; and (3) its use of cross-training and utilization of personnel and its ability to secure a staff to meet the needs of the Air Force were not convincingly demonstrated. We therefore find the agency's award to RCA to be a reasonable decision based solely on the merits of the proposals submitted.

The protest is denied.

Since the protest is denied, Burnside's claim for the costs of filing and pursuing the protest, including attorneys' fees, is also denied. Bay Decking Co., Inc., B-227833, Sept. 28, 1987, 87-2 CPD ¶ 307.


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General Counsel